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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF U S WEST)	
COMMUNICATIONS, INC.'S MOTION)	CASE NO. USW-T-00-3
FOR AN ALTERNATIVE PROCEDURE)	
TO MANAGE ITS SECTION 271)	COMMENTS OF THE
APPLICATION.)	COMMISSION STAFF
)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, and submits the following Comments.

On March 13, 2001, the Commission issued Procedural Order No. 28669 in this case to provide a schedule for completing workshops for processing Qwest's Statement of Generally Available Terms (SGAT) as described by Section 252(f) of the Telecommunications Act of 1996, 47 U.S.C. § 252(f). The SGAT provides the terms and conditions an incumbent telephone company makes available to other companies that seek interconnection with the incumbent company. Qwest's SGAT provides terms and conditions for interconnection along with access to unbundled network elements, ancillary services and resale of its telecommunications services.

Pursuant to the schedule adopted in Order No. 28669, Liberty Consulting Group, the outside Facilitator conducting the workshops, filed its Report on **Workshop Number 3, Group**

5, on September 21, 2001. This report addresses General Terms and Conditions, Section 272 Separate Affiliate Transactions and Track A Requirements. The Commission Staff submits these comments in response to this Report.

The workshop for Track A, 272 and General Terms and Conditions concluded on June 29, 2001. Due to the complex nature of the issues surrounding these proceedings, two sessions were required to complete the process and create a complete and thorough record for this Commission's consideration. The hearing dates were June 4 – 8, 2001 and June 25 – 29, 2001. The Facilitator's Report was prepared after written evidence, exhibits, briefs and testimony were submitted at the workshops. The Report reflects agreement among the parties on many of the issues, however, some issues remained at impasse at the close of the workshop proceedings. The "Public Interest" portion of the workshop report was deferred to Qwest's Quality Performance Assurance Plan (QPAP) hearings that took place in Denver in August and will be addressed in the Facilitator's future QPAP report. The Facilitator has made recommendations to achieve resolution on many issues that remained at impasse at the completion of these workshops, specifically addressing 272, Track A and General Terms and Conditions. The Facilitator has also recommended additional requirements for Qwest before it can be found in compliance with its 271 obligation.

Staff fully supports the findings and recommendations made by the Facilitator in this report and recommends that the Commission adopt and implement them. Staff further recommends that the unresolved issues be saved for oral arguments. Once the final QPAP report and the remaining Public Interest issues are submitted to this Commission and Qwest has successfully completed the OSS testing, *only then* should a recommendation be made to the FCC regarding Qwest's compliance with Section 271 of the Telecommunications Act.

Staff's comments are organized into four sections. First the comments will address General Terms and Conditions, the Facilitator's recommendations and offer support for those recommendations. The second section of these comments will address Section 272 Separate Affiliate Requirements. The third section of Staff comments addresses Track A requirements. The Facilitator originally found that Qwest had not met its burden of proof with respect to residential competition in Idaho and New Mexico, and Qwest requested an opportunity to supplement the record. On September 28, 2001, the Commission issued Procedural Order Number 28866 granting Qwest "an opportunity to supplement the record regarding the

Facilitator's finding on the existence of competition in the residential telecommunications market in Idaho." The Company complied with the filing date of October 5, 2001 as set forth in the Commission's Procedural Order. Finally, Staff summarizes its recommendations to this Commission. Staff respectfully submits the following comments.

I. GENERAL TERMS AND CONDITIONS

The issue of Landowner Consent was carried over for a "revisit" of the proposed resolution from a prior workshop. The Facilitator found that based upon the recent arguments presented here, the initial recommendation in the March 18, 2001 *Paper Workshop Issues* is appropriate and should stand. Staff agrees with this assessment.

As for the remaining General Terms and Conditions, there were nineteen issues resolved by the workshops leaving eighteen issues unresolved and subsequently decided by the Facilitator. The resolution of most issues requires that Qwest make changes to its SGAT language and Staff recommends that the Commission require the Company to make the requisite changes as set forth by the Facilitator. These changes should reflect verbatim the wording of the Facilitator, unaltered by Qwest. The issues resolved by the Facilitator are:

1. Comparability of Terms for New Products or Services
2. Limiting Durations on Picked and Chosen Provisions
3. Applying "Legitimately Related" Terms Under Pick and Choose
4. Successive Opting Into Other Agreements
5. Conflicts Between the SGAT and Other Documents
6. Implementing Changes in Legal Requirements
7. Second-Party Liability Limitations
8. Third-Party Indemnification
9. Responsibility for Retail Service Quality Assessments Against CLECs
10. Intellectual Property
11. Continuing Validity of the SGAT on Qwest's Sale of Exchanges
12. Misuse of Competitive Information
13. Access of Qwest Personnel to Forecast Data
14. Change Management Process
15. Bona Fide Request Process
16. Scope of Audit Provisions
17. Scope of Special Request Process
18. Parity of Individual Case Basis Process with Qwest Retail Operations

Staff supports the Facilitator's findings for General Terms and Conditions and recommends that this Commission adopt them as set forth in the report.

II. SECTION 272 SEPARATE AFFILIATE REQUIREMENTS

This section resulted in some lively testimony and the Facilitator was called upon to make some very difficult decisions. Staff supports those findings and recommends that the Commission adopt them. Specifically there were six main issues each containing sub-issues in dispute raised during the workshop. The main disputed issues are:

1. Separate Affiliate Requirements
2. Books and Records
3. Separate Officers, Directors, and Employees
4. Transaction Posting Completeness
5. Non-Discrimination
6. Compliance with FCC Accounting Principles

With respect to issues 1, 3 and 5, the Facilitator found that Qwest is essentially satisfying its requirements. However, item number two—Books and Records--was found to have weaknesses that affected other listed items. Accordingly, the Facilitator recommended that Qwest be required to arrange for an independent (third party) testing to examine:

- a) whether there have been adequate actions to ensure the accurate, complete, and timely recording in the Company books and records of all appropriate accounting and billing information associated with QC/QCC transactions;
- b) whether the relationship between QC as a vendor or supplier of goods and services and QCC has been managed in an arm's length manner, including, but not limited to a consideration of what would be expected under normal business standards for similar contracts with an unaffiliated third party;
- c) whether there are reasonable assurances that a continuation of the practices and procedures examined will continue to provide the level of accuracy, completeness, timeliness and arm's length conduct found in examining the preceding two questions.

This examination is to cover the time period from April 2001 through August 2001, and is to be completed with a report to each state commission by November 1, 2001. While this schedule may be somewhat aggressive, Staff fully supports the Facilitator's recommendation. The Facilitator also defined specific requirements and issues that the examination should address and questions that must be answered. Staff supports this decision.

Auditor independence is an ongoing issue in the Section 272 audit discussions Staff is involved in with Qwest and the FCC. To help assure independence is maintained, Qwest should provide the Commission of the name, address and phone number of the person performing the additional work. A copy of the draft test results should be provided to the Commission Staff at the same time it is provided to Qwest. Further review and compliance determinations will be made at that time.

Qwest, in its original filing over a year ago, was prepared to address its Section 272 requirements at the outset of the workshop process. Qwest then “reorganized” its affiliates and postponed its Section 272 review until the end of the workshop process. The Company thus has had ample time to address its oversights and to correct its shortcomings. Moreover, this is one part of the 271 process that has been completely within Qwest’s control, and it still fails to adequately meet its burden of proof, despite adequate time to address it.

III. TRACK A REQUIREMENTS

Pursuant to Section 271(c), an RBOC must actually be providing access and interconnection to its network and facilities (Track A), or have an approved Statement of Generally Available Terms by which it offers to provide access and interconnection to its network and facilities (Track B). The Facilitator determined that Qwest has not satisfied its burden of proof with respect to its Track A requirement for Idaho residential customers. The Facilitator found that “there is concern about Idaho, where only one company is listed and it is listed as serving only one community.” The Facilitator also found that “Qwest’s evidence was not sufficiently substantial to demonstrate that competitors are serving residential end users in Idaho.” Finally, the Facilitator concluded, “Qwest’s estimates of residential access lines serviced by competitors may be accepted for all states except New Mexico and Idaho. In those states, Qwest should be found not to have met Track A standards, for reason of its failure to provide substantial evidence that competitors are serving residential end users.” The Company requested an opportunity to supplement the record to demonstrate that there are a reasonable number of competitor providers for Idaho residential customers. The Commission issued Procedural Order No. 28866 granting Qwest’s request.

In its supplemental filing Qwest presented evidence it had not presented during the two previous workshops. Staff still has some reservations regarding the level of residential competition currently in Idaho. One problem may be the wholesale price of Qwest’s UNEs.

Currently, Qwest's local service UNE loop rate is \$25.52 and thus there is no margin for a competitor to purchase UNEs to provide retail services. The Company recently filed its UNE cost docket with the Commission, and the Staff and Company are working toward a TELRIC pricing structure that should make competition viable at a later date. However, for now it is important to note that the total number of lines being served in Idaho by competitors, is only 6% business customers and less than 1% of residential¹. This is significantly less than 2.6% market share that Qwest claims is being served when combining the estimated bypass lines with the actual counts of leased UNE loops and resold lines, as was found by the Facilitator.

At the workshop, Qwest's testimony presented three CLECs that were, to its understanding, providing residential services in Idaho. Staff requested that Qwest provide a list of the type of services (residential/business/data) being provided by those CLECs listed in its testimony. Tr. p. 76. The Company agreed that it would be possible to provide this information to the Staff because of the reseller arrangements between the companies. Staff never received this information, despite a request through the Facilitator for a follow-up. Staff received a brief e-mail from Qwest's attorney, but the residential service versus data service versus business service information was never provided.

Qwest did supplement the record with affidavits and new evidence to demonstrate competition in the residential market. Qwest claims that Leap Wireless, a facilities-based broadband PCS carrier marketing its Cricket-brand wireless service, along with McLeod Telecommunications and Project Mutual Telephone, are providing residential services that satisfy the requirement for actual competitive residential services for Track A approval.

Cricket Communication may well become a contender for Qwest wireline customers. However, the company is new and is offering a very limited local calling area that may only appeal to a small market niche such as the soccer moms and young adults targeted by Crickets' advertisements. It is too soon to speculate on the market share Cricket will take from Qwest or whether the Cricket service will be in addition to Qwest's landline services.

As for McLeod, there has been some concern with customers who have gone with this service and are now migrating back to Qwest through Qwest's "Winback" program. The Commission's Consumer Investigation Staff has received a number of complaints regarding the Winback practice and Qwest's inability to transfer current McLeod customers back to Qwest.

¹ Idaho Universal Service Fund Administrator's Report to the Commission for 2000 – 2001.

There have been a number of reasons offered by Qwest as to why there are held and lost orders for this process. The Staff is concerned about this process, but is confident that it will be resolved within the on-going OSS testing that Qwest must still complete.

Finally, regarding Project Mutual. Qwest presents “an extract from Qwest’s white pages listings data base . . .to identify the number of listings associated with prefixes . . . thereby obtain[ing] a count of the number of access lines currently served by PMT in Burley and Heyburn.” While this exercise is more scientific than that presented in a previous Burley deregulation case, it does not demonstrate a significant amount of residential competition within the state of Idaho. Heyburn is not a wire center; it is a town with a population of approximately 2,700. Burley is a small community with a population of approximately 9,000 citizens, Declo has a population of approximately 280. The Burley exchange is comprised of the Burley and Declo wire centers.

Based upon the supplemented record provided by Qwest, Staff is not convinced the record demonstrates that Qwest has fully and irreversibly opened the local telecommunications market to competition for residential customers. Establishing appropriate UNE rates should improve the competitive environment in Idaho. Therefore Staff recommends that the Commission condition its recommendation to the FCC for Track A residential competitive compliance upon Qwest’s successful completion of its UNE cost docket proceedings and OSS testing.

IV. OVERALL RECOMMENDATION

Many of the Facilitator’s proposed resolutions in the above mentioned items require that Qwest make language changes to its SGAT. Overall, Staff supports Liberty’s findings and recommends the Commission adopt them and require Qwest to make ALL of the Facilitator’s recommended SGAT changes. The Commission should not make any decision regarding Quest’s compliance with Section 271 until Qwest has implemented *all* of the Facilitator’s recommended SGAT changes, satisfied the recommended evaluation by an outside auditor by November 1, 2001 and oral arguments have been heard on the unresolved issues addressed in this report.

DATED at Boise, Idaho, this 20th day of October 2001.

Weldon B. Stutzman
Deputy Attorney General

Technical Staff: Carolee Hall

CH:u271/WS 3 GTC, 272 and Track A Staff Comments